IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 3131 of 2005(W)

AGAINST THE ORDER IN IN IA.1988/2004 IN OS.237/2004 of MUNSIF COURT, KUTHUPARAMBA
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PETITIONERS:
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1. **CHATHOTH PUTHANPURAYIL ABDULLA KUTTY, S/O.KUNHAMMED, AGED 56 YEARS, AGRICULTURIST, ALL HILAL, PAZHASSI AMSOMELLUNNI DESOM, THALASSERY TALUK.**

2. **MANGALADAN ALIYUMMA, W/O.ABDULLAKUTTY, AGED 49, NO OCCUPATION, ALL HILAL, PAZHASSI AMSOM, NELLUNNI DESOM, THALASSERY TALUK.**

BY ADV. SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL

RESPONDENTS:
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1. **PURUSHOTHAMAN.K. S/O.ANANDAN, AGED 32 YEARS, TAPPING, PAZHASSI AMSOM, NELLUNNI DESOM, P.O.MATTANNUR, THALASSERY TALUK.**

2. **P.R.LEELA, W/O.K.K. NANU NAMBIAR, AGED 57, NO OCCUPATION, KUNHIKANDIYIL HOUSE, PAZHASSI AMSOM, NELLUNNI DESOM, P.O. MATTANNUR.**

3. **GEETHA, D/O.K.K.NANU NAMBIAR,A GED 27 NO OCCUPATION, KUNHIKANDIYIL HOUSE, PAZHASSI AMSOM NELLUNNI DESOM, P.O. MATTANNUR.**

4. **PREETHA, D/O.K.K.NANU NAMBIAR, AGED 25 NO OCCUPATION, KUNHIKANDIYIL HOUSE, PAZHASSI AMSOM, NELLUNNI DESOM, P.O.MATTANNUR.**

5. **BHASKARA BHANU, S/O.NANU NAMBIAR, AGED 21 YEARS, BILL COLLECTOR, PAZHASSI SERVICE CO-OPERATIVE BANK, PAZHASSI AMSOM, NELLUNNI DESOM, P.O. MATTANNUR.**

**6. PRASANTH P.K. S/O.K.K.NANU NAMBIAR,
AGED 19 YEARS, NEWS PAPER AGENT, KUNHIKANDIYIL
HOUSE, PAZHASSI AMSOM, NELLUNNI DESOM,
P.O.MATTANNUR.**

BY ADV. SRI.KALEESWARAM RAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1	**TRUE COPY OF PLAINT IN OS 237/04 FILED BEFORE THE MUNSIFF COURT, KUTHUPARAMBA.**
EXT.P2	**TRUE COPY OF WRITTEN STATEMENT OS 237/04 FILED BEFORE THE MUNSIFF COURT, KUTHUPARAMBA.**
EXT.P3	**TRUE COPY OF AFFIDAVIT FILED BY THE PLAINTIFF APPOINTMENT OF ADVOCATE COMMISSIONER.**
EXT.P4	**TRUE COPY OF REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER FILED BY BEFORE THE BEFORE THE MUNSIFF COURT, KUTHUPARAMBA IN OS 237/04.**
EXT.P4(A)	**TRUE COPY OF SKETCH PLAN -DO- -DO-**
EXT.P5	**TRUE COPY AFFIDAVIT FILED BY THE 1ST DEFENDANT IN OS 237/04 FILED BEFORE THE MUNSIFF COURT, KUTHUPARAMBA.**
EXT.P6	**TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST DEFENDANT IN OS 237/04 IN IA 1988/04 FILED BEFORE THE MUNSIFF COURT, KUTHUPARAMBA SET ASIDE THE COMMISSIONER'S PLAN AND REPORT .**
EXT.P7	**TRUE COPY OF ORDER IN IA 1988/04 IN OS 237/04 ISSUED MUNSIFF COURT, KUTHUPARAMBA, DTD.21.12.04.**
EXT.P8	**TRUE COPY OF THE AFFIDAVIT FILED BY THE 1ST DEFENDANT DTD.12.10.04.**
EXT.P9	**TRUE COPY OF COUNTER AFFIDAVIT IN OS 237/04 IN IA 1988/04 BEFORE THE MUNSIFF COURT, KUTHUPARAMBA.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 3131 OF 2005

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Dated this the 18th day of June, 2007.

J U D G M E N T

This writ petition is filed seeking to quash Ext.P7 order which was an application for setting aside the Commissioner's plan and report. The learned Munsiff by a cryptic order had set aside the Commissioner's plan and report on the ground that there are serious allegations of bias and partisanship committed by the Commissioner. He thus also makes a reference that several anomalies are there in the report.

2. A Commissioner is a person and officer of the court and who is appointed by the court to assist the court in property disputes and the Commissioner's plan and report cannot be slightly brushed aside without an iota of evidence or without even considering what is even the anomaly. Therefore, the order impugned is without substance and is liable to be set aside and I do so.

Therefore, Ext.P7 is set aside and the application is remitted back to the trial court for fresh consideration and the learned Munsiff is directed to hear both sides and if necessary permit them to adduce evidence in support of their respective contentions and thereafter dispose of the application to set aside the Commissioner's plan and report in accordance with law. Parties are directed to appear before the trial court on 10.7.2007.

M.N. KRISHNAN, JUDGE.

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